[1] S.B. Civil Revision Petition No.651/98
[2] S.B. Civil Revision Petition No.652/98

Sewak Ram B. Hotchandani

Vs.

Union of India

Date of Order : 11/08/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Ajeet Bhandari, for petitioner
Mr. S.S. Hasan, for respondent

Both the Execution Petitions No.12/87 & 9/93 since have been decided by common order dated 12th February, 1998 by the Executing Court, hence both the revision petitions are also decided by common order.

Instant revision petitions have been filed by the degree holder against the order dated 12th February, 1998 whereby the learned Executing Court dismissed both the Executing Petitions No.12/87 and 9/93 on the premise that petitioner is not entitled for promotional benefits without he has reported for duty and so far as Execution Petition No.9/93 is concerned, without the same being adjudicated was also disposed of by the present order.

Facts which require adjudication for examining the dispute are that the revision petitioner initially joined service on 20th March, 1957 as Rakshak and was further promoted as Senior Rakshak on 25th July, 1966. Because of some delinquency committed by him, he was dismissed from service on 12th September, 1967. The said dismissal was challenged by the revision petitioner by filing civil suit and after its adjudication the suit was decreed on 17th December, 1980 whereby his dismissal was set aside and he was treated to be in continuous

service with all consequential benefits. The extract of the decree passed by the learned trial Judge is reproduced as under:

> "यह धोषित किया जाता है कि वादी की सेवा से हटाये जाने का आदेश दिनांक 12-9-67 गैर कानूनी अवैघ व निष्प्रभावी है और वादी प्रतिवादी की सेवा में चला आ रहा है और वह उन सब अघिकारों को प्राप्त करने का अघिकारी है जो उक्त सेवा से जुडे हुए हैं। ।2। वादी प्रतिवादी से 3240.00 रू. अपने वेतन की ऐवज में प्रतिवादी से पावेगा। ।3। वादी प्रतिवादी से 3240.00 रू. पर दिनांक 1-4-69 से तावसुली तक 6% वार्षिक की दर से ब्याज भी पावेगा। ।4। दावे का खर्चा भी वादी प्रतिवादी से पावेगा।"

Against the said judgment and decree of the learned trial Judge, the respondent Union of India preferred appeal that too was dismissed on 20th October, 1991. Pending appeal preferred by the respondent, the petitioner-plaintiff filed Execution Petition No.19/81 which was consigned to record vide order dated 11th August, 1983 on payment of sum of Rs.3336.55 paisa as per decree passed in his favour on 17th December, 1980. The petitioner served a notice for grant of voluntary retirement in December, 1985 to be given effect to w.e.f. 1st April, 1986, but no orders were passed by the respondent on the said application and in the Revision Petition No.651/98 this court passed further order on 21st January, 2004 granting liberty to the petitioner to file fresh application seeking voluntary retirement and the respondents were also given liberty to consider and decide the same in accordance with law. His application for seeking voluntary retirement was rejected after assigning reason vide order dated 5th March, 2004.

Another Execution Petition No.12/87 was filed wherein the petitioner claimed promotional benefits for the intervening period as he was not permitted to report for duty. Further Execution Petition No.9/93 was filed

wherein the petitioner claimed his terminal benefits as he stood retired on attaining the age of superannuation. Both the execution petitions were decided by the learned Executing Court vide order dated 12th February, 1998.

Counsel for petitioner Mr. Bhandari submits that the finding which has been recorded by the learned Executing Court while rejecting both the execution petitions under the order impugned dated 12th February, 1998 is not supported by material on record, but without going into merits of the same, counsel submits that since the respondents have failed to pass any adverse order and the order of reinstatement was passed in compliance of judgment and decree only on 25th September, 1984 he has become entitle for grant of terminal benefits on the basis of his qualifying service which he has rendered from 20th March, 1957 till passing of the order of reinstatement dated 25th September, 1984 and atleast to this extent, he was entitled for grant of execution under the judgment and decree passed in his favour dated 17th December, 1980.

Counsel for respondent, Mr. Hasan, on the other hand, has vehemently opposed the submission made by the counsel for petitioner and submits that since the petitioner failed to report for duty despite order of reinstatement passed, as such he is not entitled for terminal benefits and the monetary benefits to which the petitioner was entitled for, were already paid for a sum of Rs.71,573.01 on 27th October, 1990 and so also for a sum of Rs.7845/- on 4th March, 1992 as such according to him decree has been fully satisfied and no further relief the petitioner is entitled for and the learned Executing Court has not committed any error in rejecting both the execution petitions under the order impugned dated 12th February, 1998.

I have considered the submissions of both the counsel and with their assistance perused the material on record.

This fact remain undisputed that after passing of judgment and decree in favour of the petitioner on 17th December, 1980 respondent passed order for his reinstatement only on 25th September, 1984 and even if he has not reported for duty in compliance of the order of reinstatement no adverse order eitherway was passed against the petitioner by the respondents he was deemed to be in service which made him entitled for benefits upto the date of order of reinstatement passed in his favour.

The submission made by the counsel for respondent that he has not reported for duty will not entitle him for grant of benefits is without any substance. If the respondent has failed to pass any order which may cause any prejudice to the petitioner despite order of reinstatement, which in my opinion, certainly has made him entitled for benefits atleast upto the date of reinstatement may not be for the period thereof and this is not a case of the respondent at all that the petitioner failed to attain the qualifying service as provided under the relevant rules for release of his terminal benefits.

Learned Executing Court has only considered the first Execution Petition No.12/87 which was related to grant of his promotional benefits, but so far as the Execution Petition No.9/93 for release of retiral benefits is concerned, the same has not at all been considered by the learned Executing Court on merits and has been disposed of simply on the premise that since the earlier application has been rejected, the

subsequent application No.9/93 does not require any further adjudication.

Since the subsequent Execution Petition No.9/93 of which submissions were made by the counsel for petitioner has not been considered on merits in the ordinary course it was required to be remanded back for re-consideration, but in the facts of the present case when complete material has come on record and the decree-holder as informed is above 75 years of age seeking execution of decree of 1980, I am not inclined to remand the case back for re-consideration by the learned Executing Court.

Consequently, the revision petitions are partly allowed. The order of learned Executing Court dated 12th February, 1998 is hereby quashed and set aside and the petitioner is entitled for grant of terminal benefits on the basis of qualifying service which he has rendered from 20th March, 1957 upto passing of the order of reinstatement dated 25th September, 1984 and this be treated to be his qualifying service for the purpose of release of terminal benefits to which he is entitled for under the relevant rules. The respondents are directed to comply the order of this court within a period of three months. No order as to costs.

` [Ajay Rastogi],J.

FRB